

Missouri Medical Malpractice Joint Underwriting Association

Minutes for the Meeting of March 11, 2004

- Location:** Central Conference Room of the Offices of the Missouri Department of Insurance in Room 530 of the Truman State Office Building, Jefferson City
- Time:** 10:00 a.m. to 2:30 p.m.
- Attending:
(Board)** Bill Turley, Chairman [Shelter Insurance Companies/NAII]*
Don Ainsworth [Safety Nat'l Casualty Co./the Alliance]
Paul Blume (*via teleconference*) [AIG/Unaffiliated Companies]
Craig Kjellberg (*via teleconference*) [State Farm Ins./Unaffiliated Cos.]
Dave Monaghan [American Family Insurance/NAII]
Patty Williamson [Uhlemeyer Services Inc./AIA]
- (MDI Staff)** Linda Bohrer, Director, Division of Market Regulation
Kevin Jones, General Counsel
Susan Schulte, Chief, Property & Casualty Section
Mark Doerner, Senior Counsel, P&C Section
- (Witnesses)** Harry Gallagher, representing the PCI
Geri Morrison, Medical Assurance Company
Tim Trout, Missouri Physician Mutual
Don Carmody, Missouri Physicians Mutual
- (Audience)** Fred Brown, Missouri State Medical Association
Amy Hamacher, Missouri Insurance Coalition
Brent Butler, Missouri Insurance Coalition
Keith Wenzel, Hendren & Andrae
Sharon Jones, Missouri Association of Trial Attorneys
Steve Millikan, Missouri Employers Mutual Insurance Co.
Andrew Teigen, Marsh
Sheryl Manger, Marsh
Robert Brown, Missouri Physicians Mutual

* Material in brackets following the names of Board members indicate the insurance companies they work for and then the insurance industry trade groups which they are representing under Section 383.175, RSMo.

The meeting was called to order at approximately 10:00 a.m. by Chairman Turley. The basic purpose of the meeting was for the Board members and representatives of the Department of Insurance to receive comments from interested individuals and organizations regarding the Board's draft Plan of Operations, which had previously been posted for the Board by the Department on the Department's web site. The Chairman discussed written comments the Board had received from AIA and an e-mail from the Missouri State Medical Association.

The first witness with comments was Harry Gallagher, representing the newly formed Property & Casualty Insurance Association of America (or PCI). Harry presented the Board with written comments prepared by Joe Woods, Assistant Vice President and Regional Manager of PCI. This comments reflected the following concerns:

- That the Plan (and also the underlying statute's definition) of an assessable "casualty" insurer included workers' compensation and private passenger auto companies. Assessments against these types of companies would have "significant unintended consequences" on these lines.
- That claims-made coverage should also be made available by the JUA.
- That underwriting standards in the plan be strengthened to avoid adverse selection.
- That actuarially sound and self-supporting rates, as called for in the Plan, should help avoid assessments.

Mr. Gallagher added that the Board should keep in mind states like South Carolina, where the JUA developed a reserve deficiency of \$35 million. The Board showed interest in getting additional information on the South Carolina situation.

The Board next heard from Geri Morrison, who said her company, Medical Assurance Co., was the only "379" company (i.e., a traditional stock-financed insurer operating under Chapter 379 of the Revised Statutes of Missouri) that is still actively writing new medical malpractice business in Missouri. She has some experience in the areas of residual markets, being a member of the Kansas Board.

Ms. Morrison discussed a number of issues. She said that offering claims-made policies would actually broaden the JUA's exposure, via the retro dates on such coverage. She recommended that the Board require two declinations before binding coverage for initial applications, and that any applicants provided with coverage be reviewed annually thereafter. She offered the opinion that the current crisis was one of "affordability" rather than "availability," and she recommended that the Board pick an actuary with considerable medical malpractice experience, including experience with the Missouri environment. She recommended that the actuary be independent, to provide a check and balance on the operation of the JUA. She suggested the JUA use Missouri data only, since the Department of Insurance seems to have a concern that other carriers are using non-Missouri data. She voiced a concern about the losses being experienced by the industry and concern about Missouri's "383" companies. She also offered to serve on any committees of the JUA.

Next, the Board heard from Tim Trout and Don Carmody of Missouri Physicians Mutual Insurance Company, one of the state's new "383" companies. They offered the opinion that the statutes intended the JUA to be an "insurer of last resort." Because MPM is not limiting its policyholder base to only the lowest-risk providers, MPM will satisfy much of the market's need for additional capacity. They do not want to have to compete with the JUA for business.

They noted that the JUA's Plan provides that the JUA will not "actively compete" for business. They requested that the Board require declination letters and that one such letter be from MPM. Or, they suggested that anyone insured by the JUA pay a premium surcharge above what they would pay in the market otherwise.

They interpreted provisions in the statute regarding providing "occurrence" policies and the so-called "double premium" as indicating a statutory intent that the JUA not compete with other carriers in the market. In addition, they suggested that MPM is currently filling the need for capacity in the marketplace, and that a JUA would be writing only a fraction of the market, perhaps only 1%.

Tim Trout also discussed whether the Missouri Board of Healing Arts is doing an adequate job of disciplining bad doctors. In his view, if they were doing a better job, Missouri would not have the crisis in pricing it is now facing, due to that minority of doctors who are responsible for the majority of the claims.

They suggested if the government gets involved with this market, it will have disastrous consequences at a time when the state can ill-afford loss of revenue through an assessment on casualty carriers (and the subsequent state tax write-off of these assessments by these carriers).

They also discuss various aspects of MPM's operations, such as how their premium is used, how many policies they have written (1,500 of the 1,600 applications they have received), and how they plan to do loss control. In closing, they encouraged the JUA Board to consider being successful by not writing coverage.

Geri Morrison then asked to make some additional comments. Some of these comments were directed at issues relating to 383 companies, which drew responses from Tim Trout and Don Carmody. However, these issues were not the focus of the Board's meeting.

Ms. Morrison also discussed the option being considered by the Board of offering reinsurance to the primary carriers in the market. She suggested that, if done, it be done on a "quota share" arrangement in order to make sure the primary carrier retains a portion of the liability, in order to encourage the primary carrier to do an adequate job in handling claims and managing litigation.

After breaking for lunch, the Board reconvened and recommended to the Department's staff that they make a number of technical changes to the draft Plan of Operations (which were incorporated into the 3-22-04 draft of the Plan).

They also discussed some of the comments received at the morning hearing. They decided that the written comments received from AIA regarding the make-up of the Board of Directors of the JUA (following the merger of two of the three trade groups represented on the Board) was a matter for the Director to consider, not the Board.

They discussed the issue of selecting a servicing company and concluded that the statute only required the Plan of Operations to set forth a procedure for selecting such an entity, not actually naming such an entity in the Plan.

They discussed whether more stringent underwriting guidelines should be adopted, along the lines of those suggested by PCI, and decided to add language to the Plan requiring the applicant to also meet any underwriting criteria developed by the primary service provider and eventually incorporated into any underwriting manual.

Finally, the Chairman did a random drawing to determine which members of the Board members would have 3-year terms of office, and which would have 2-year terms. The results were as follows:

<u>2-Year</u>	<u>3-Year</u>
Monaghan	Turley
Ainsworth	Koch
Williamson	Smith
Blume	Kjellberg

The meeting adjourned at approximately 2:30 pm.